Supreme Court, U. S.
FILED
APR 14 1980
MICHAEL RODAK, JR., CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1606

James E. Carter, Jr.,
Appellant,

vs

City of Kansas City, Missouri,
Appellee.

On Appeal from the Supreme Court
of the State of Missouri

JURISDICTIONAL STATEMENT

James E. Carter, Jr.
In Propria Persona
2440 Rochester
Kansas City, Missouri
64120
(816) 241-2722

April, 1980

TABLE OF CONTENTS

	page
Opinions Below	1
Jurisdiction	2
The Question Presented	3
Statement of the Case	4
The Federal Question was Raised	5
The Federal Question is Substantial	8
Conclusion	15

TABLE OF AUTHORITIES

Supreme Court Cases:

American Mfg. v St. Louis, 250 US 459	8, 14
Carmichael v Southern Coal & Coke, 301 US 495	14
Chambers v Mississippi, 410 US 284	2
Green v McElroy, 360 US 474	8
Hood & Sons v Dumond, 336 US 525	11
Murdock v Pennsylvania, 319 US 105	8
New York ex rel. Bryant v Zimmerman, 278 US 63	3
Northwestern States Portland Cement Co. v Minnesota, 358 US 450	8

Rogers v Alabama, 192 US 226	3
Smith v Texas, 233 US 630	11, 13
Street v New York, 394 US 576	2
Truax v Raich, 239 US 33	8
U.S. v Texas, 252 F. Sup. 234; affirmed, 384 US 155	8

OTHER AUTHORITIES:

U.S. v Lewisburg Schools, 539 F2d 301	11
White v City of Evansville, 310 F. Sup. 569	9, 11
People v Bates, 93 NYS2d 313	14
United States Constitution, Art. IV, Sec 4.	11
Missouri Constitution, Art. V, Sec. 3.	5
Code of Judicial Conduct, Canon 3, B (3)	4
71 Am Jur2d, State & Local Taxation 392	14

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. _____

James E. Carter, Jr.,
Appellant,

vs.

City of Kansas City, Missouri,
Appellee.

JURISDICTIONAL STATEMENT

Appellant contends that the application of the City's Occupational License Tax on a natural citizen as a revenue tax violates the guarantee of Liberty as secured by the Preamble, the Fifth Amendment, and the Fourteenth Amendment of the U.S. Constitution.

OPINION BELOW

The Opinion of the Court of Appeals, Western District, State of Missouri, unreported at this time, is appended. The Order denying Motion for Rehearing and Motion for Transfer is appended.

The Order of the Supreme Court of Missouri denying Application for Transfer is appended.

PROCEDURAL GROUNDS FOR JURISDICTION

The Circuit Court of Jackson County, Missouri, sitting without a jury, on trial de nova, found the appellant guilty of doing business in the City of Kansas City, Missouri, without having purchased/paid the Occupational License Tax (a misdemeanor) in violation of City Ordinance 21.20 on July 14, 1978.

The Opinion of the Court of Appeals affirmed the judgment of the trial court on October 29, 1979. Motions for Rehearing and for Transfer to the Supreme Court of the State of Missouri were denied on December 3, 1979.

The Application for Transfer filed in the Supreme Court of the State of Missouri was denied on January 15, 1980. Motions for rehearing are not filed.

Notice of Appeal to the Supreme Court of the United States was filed in the Court of Appeals on January 25, 1980.

This Appeal is being docketed in the Court within 90 days from the denial of Application for Transfer. The jurisdiction of this court is invoked under 28 USC 1257 (2).

The possibility that the Opinion may not have construed federal rights is insufficient grounds for denial of this appeal. The Opinion briefly mentions "constitutional prohibition" and such a statement may be taken as construing the state constitution, notwithstanding the fact that the Court of Appeals does not have appellate jurisdiction to construe the state constitution. See page 7a. The necessary effect of the Opinion is to deny the federal claim and is as subject to review as an express decision on the point. Street v. New York, 394 U.S. 576, 582; Chambers v. Mississippi, 410 U.S. 284, 290.

The denial of Application for Transfer, if used as an evasion of the court's jurisdiction to construe a

properly presented federal claim, does not negate the opportunity to appeal such a decision on federal ground. Rogers v. Alabama, 192 U.S. 226, 230-231. Where the federal issue has expressly or by clear intendment been "brought to the attention of the State court with fair precision and in due time" it can be appealed if the issue is not adjudicated below. New York ex rel. Bryant v. Zimmerman. 278 U.S. 63, 67.

City ordinance 21.20 authorizing the occupational license tax is appended. Constitutional and statutory provisions involved are also appended.

QUESTION PRESENTED BY APPEAL

The appellant contends that the city ordinance requiring a natural citizen (as distinguished from a corporation) to purchase a city occupational license to pursue business (imposed as a revenue tax and not as a regulatory tax) infringes on and violates the federal right of Liberty secured by the Preamble, the Fifth Amendment, and the Fourteenth Amendment and is therefore unconstitutional as applied.

It is believed that a fair hearing of this question, and the briefs, must address the following questions that have not produced a response below:

1. Is the nature of the occupational license tax the purchase of the privilege to pursue business?
2. Does the federal guarantee of liberty include the right for an individual to pursue any non-regulated lawful livelihood or avocation, to make a living, and to enter and fulfill contracts for economic gain?
3. Is the license (permission) that is being sold by the city the same as the secured federal right of liberty?
4. If the above is affirmative, can a person be required to purchase that which is already his?
5. Is liberty a basic fundamental right?

6. If so, can a basic fundamental federal right be a proper subject for a revenue tax levied by the city?

Appellant also requests permission to submit an auxiliary typewritten brief to this court as respondent superior pursuant to Canon 3, B, (3), Code of Judicial Conduct, to review a supplementary question raised in appellant's Brief and in the Reply below that was not addressed below.

STATEMENT OF THF CASF

The appellant was served an information for "doing business without an occupation license" on or about April 6, 1978. A special appearance was made in the Municipal Court of Kansas City to challenge jurisdiction on May 10, 1978.

The appellant attempted to remove the issue to federal district court on the contention that the issue was a federal question and that an issue of federal constitutional rights should not be adjudicated in the municipal court. During this process, an "Original Answer and Counterclaim" was filed in the district court and was served on municipal court on June 12. T. 82. The removal attempt was unsuccessful.

Appellant was found guilty in municipal court on June 14, 1978.

Trial de nova was held in circuit court during an initial appearance on July 14, 1978. The appearance of the appellant was to determine the status of the "Original Answer and Counterclaim" believed to have been previously entered in this case. Appellant declared that he was not prepared for trial. T 25, L 3. The appellant was found guilty and fined that day. No challenge has been raised on appeal as to irregularity of court procedure or adequacy of evidence to support conviction. The fine was reiterated during a hearing on post-trial motions on September 14, 1978.

The allegation that the tax is applied as a revenue tax and not as a regulatory tax was made in appellant's Brief (p 15) filed in the Court of Appeals and was not challenged by respondent. A defense not briefed is a defense waived. This potential defense was again expressly waived by respondent during oral arguments. The only issue raised on appeal is that the ordinance infringes on the federal constitutional right of liberty as secured by the Fifth and Fourteenth Amendments.

A FEDFRAL QUFSTION WAS RAISED

It is believed that the juxiposition of appellate jurisdiction in the Court of Appeals is sufficient to show that the issue presented has been accepted as a federal question. The Missouri Constitution, Article V, Section Three, was amended in 1976 to transfer appellate review for construing the federal constitution from the Supreme Court to the Court of Appeals. Appellate jurisdiction for construing the state constitution is still retained by the Supreme Court. See page 7a. Notice of Appeal from circuit court was erroneously directed to the Supreme Court and was transferred to the Court of Appeals by Order dated February 16, 1979, after the transcript had been received in the Supreme Court.

In addition, the Opinion quotes the appellant during trial to assert "...liberty as secured by the Preamble of the United States Constitution..." and that the defense consists of "only constitutional defenses." Subsequent pleadings after Opinion have preserved and renewed the same federal defense on all occasions.

In the event that the above is deemed inconclusive to show a federal question has been presented and maintained, the record will show that the appellant has relied exclusively on federal case citations when presenting the merits of the constitutional defense and

that the federal constitutional right to liberty as secured by the Fifth and Fourteenth Amendment is clearly discernable, and is usually stated explicitly, in the following documents contained in the transcript and record:

1. A Motion to Dismiss for Lack of Jurisdiction filed in municipal court on April 26, 1978, clearly asserts a federal right to liberty. T 6, 7.

2. A Petition for Removal filed in U.S. District Court on June 5 presents a "direct challenge to the constitutionality of the enforcement of the city occupational license tax..." with four pages of U.S. Supreme Court citations construing the federal right to liberty. T 8 - 13. (Case No. 78-0406-CV-W-4.)

3. An Original Answer and Counterclaim filed in district court and served on the municipal court on June 12 (T 82) was filed/refiled by leave of the circuit court during trial. T 14 - 21. The pleading repeatedly contains "U. S. Constitution", "Liberty", and references to federal rights. It asserts the ordinance infringes on these rights and is unconstitutional. This defense was explicitly denied. T 71, L 7.

4. During trial, the only defense presented was on U.S. Constitutional grounds as previously submitted in written pleadings. T 70, L 5; T 71, L 23; T 72, L 16. This defense was denied. T 71, L 7; T 73, L10.

5. Appellant's Motion for New Trial asserts U.S. Constitutional rights as previously presented in pleadings. T 79. The Motion was overruled. T 101, L 14.

6. During allocution, the appellant asserted the federal constitutional right to liberty was being violated by the city ordinance. T 104, L 14.

7. The Notice of Appeal from circuit court clearly declares the U.S. Constitutional right to liberty in the Preamble, the Fifth, and the Fourteenth Amendment is the defense of the appellant. T 106.

8. Appellant's Brief filed in the Court of Appeals presents the U.S. Constitutional right of liberty as the only defense. The same defense was orally presented and recognized by the court. The Brief contains a direct challenge to the ordinance on page 28.

9. Appellant's Reply Brief restates the direct attack on the ordinance. p 7.

10. The Motion for Rehearing filed in the Court of Appeals on November 9 clearly asserts federal constitutional rights.

11. The Motion for Transfer also filed on November 9 clearly states the defense is based on a "Federal right" to "liberty."

12. The Application for Transfer filed in the Supreme Court of Missouri on December 17, 1979, clearly asserts the "Federal Constitutional Right" to "Liberty" and requested a re-examination of the existing city ordinance.

THF FEDERAL QUESTION IS SUBSTANTIAL

It is believed that the legal answers to the 'Question Presented on Appeal' are so well recognized that extensive citations would be an insult to this learned court and would add little to this Statement. The briefs and pleadings below contained voluminous citations of pertinent holdings by the U.S.Supreme Court of which the following are only representative:

1. An occupational license tax is the purchase of the privilege to pursue business. American Manufacturing Co. v St. Louis, 250 US 459; Northwestern States Portland Cement Co. v Minnesota, 358 US 450.

2. The fundamental right to liberty includes the right to make a living and pursue a livelihood. Green v McElroy, 360 US 474; Truax v Raich, 239 US 33, 41.

3. A basic fundamental federal right is not a suitable basis for a revenue tax. Murdock v Pennsylvania, 319 US 105, 113; U.S. v Texas, 252 F. Sup. 234, affirmed 384 US 155.

Correspondingly, it is the importance rather than the legality of this issue that must be conveyed to this court.

The question that is brought before this court is an issue that was influential in the penning of the Declaration of Independence and the resultant establishment of a free and sovereign United States of America. Our forefathers declared that liberty is an inalienable right, a gift from the Almighty, and that it is the purpose of government to protect and secure that heritage. When the Constitution was being formulated, our forefathers succinctly declared in the Preamble that a purpose for the constitution was to "secure the blessings

of liberty to ourselves and our posterity..." and this liberty has been repeatedly adjudicated to include the right to make a living. The sanctity of this right was instrumental in forbidding the City of Evansville from denying an occupational license to a plumber and thereby preventing his pursuit of a livelihood. White v Evansville, 310 F Sup. 569.

The challenge presented here is as novel and unique to this court as it is simple and straightforward. This court is burdened with litigation of occupational license tax cases that have been brought by corporations but there is a complete absence of any U.S. Supreme Court case that construes the constitutional rights of an individual. Corporations which have no federal claim to liberty obviously cannot plead such a right for an individual. Seldom does an individual endure the trauma of litigation, or the expense, to carry a challenge to a small tax to this level. It is so much easier to compromise principles, to buy relief at a small price, and enjoy leisure time.

But times are changing and this challenge will reoccur. This is an era in which individuals are being exposed to additional economic burdens and regulations at an alarming rate. They are being compelled to protect themselves by learning their legal rights. Even today, legal awareness seminars are available from non-lawyers. Knowledge of basic federal constitutional rights is being acquired by potential litigants. The cost of compromising one's principles may some day reach the break-even point with the cost of suffering the consequences of sustained litigation, or other punishment. It is assured that if the issues raised herein are not adjudicated at this time, they will be presented again, possibly by others. History reveals that our forefathers attempted to obtain justice within the judicial system for many years.

The benevolence of man has been a hallmark of civilization and for many years entrepreneurs have willingly supported the government because they felt a moral obligation and had the economic means to so do. The support of government has ceased to be charity and has now become exploitation to support an ever-increasing economic burden that history documents to have destroyed every great civilization that ever existed. Individuals in business are increasingly being called upon to provide more earnings for government than they provide for owners. Acts of gratuity have been replaced with a fight for economic survival. Historically, if relief is not readily obtainable, desperation swells the ranks. The price of justice, and the consequences of denial, escalates. King George would have done well to heed the lamentations from the colonies.

The question presented is a question of sovereignty; the power to impose a tax on a constitutional right and also the power to control a constitutional right. It is the question of whether "We the people..." established a government to protect or to control the people. It has been declared that the effects of a tax are of no concern to this court, but that this court is concerned only with the power to tax, and if the power exists, the effects must fall where they will. This court has repeatedly upheld the validity of a tax even when it resulted in the destruction of the economic endeavor, provided the power to levy the tax existed. This appeal is a continuation of a challenge to the power of the city to impose a tax on a secured basic fundamental federal right that was presented before trial in municipal court. The power to tax is the power to destroy, and allowing this tax to exist jeopardizes a cornerstone of the United States Constitution and of the American way of life.

It is well established that a license is permission to do that for which the license is issued. Can it be that our forefathers established a system of government that would be allowed to sell permission to make a living? Definitely not. "Our system is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the nation." Hood & Sons v Dumond, 336 US 525, 539. The specific guarantee of a 'republic' form of government in Article IV, Section Four, of the U.S. Constitution is totally inconsistent with any concept of government control of an individual's opportunity to make a living. There are many forms of government that espouse control of an individual's livelihood but a republic, by definition, cannot be included in that list.

It is not insignificant that a mere license is always revocable. Witness the recent case of White v City of Evansville, 310 F. Sup. 569, where the city denied a permit/license to an individual and thereby denied him pursuit of his livelihood. Litigation had to be initiated to allow the man to make a living. The court declared that denial of a livelihood constituted a deprivation of liberty and property. cf. Smith v Texas, 233 US 630. The stark awareness that the opportunity to make a living may be at the discretion of a local government is awesome.

It is surely not an overstatement that the opportunity to make a living, or even simple daily activities, is erroneously believed to be within the control of the local taxing authority. Even the word 'occupations' has taken on alarming implications. The case of U.S. v Lewisburg Schools, 539 F2d 301, adjudicated an occupational tax imposed on housewives. It is unbelievable. House-wives clearly refers to a marital relationship. My wife, just to stay home and raise child-

ren, would have to pay a tax if we lived in Lewisburg? Perhaps this interpretation of 'housewives' is to be enforced at some future time if not now. Is this permission to be, or to have, a housewife removed if the tax is not paid?

The ordinances of Kansas City make it indisputable that the intent of the license tax is to deny an individual from pursuing a livelihood, by police power, unless the tax is paid and the individual complies with the wishes of the city fathers as written in the ordinances. The Kansas City ordinances relating to the Occupational License tax include the following:

"Section 21.24 GENERAL DUTY OF POLICE
It shall be the duty of the police to prevent any person commencing, carrying on, or conducting any business, trade, calling, amusement or entertainment or other thing for which a license is required by ordinance without first procuring from the city a license therefor. It shall be the duty of the police to report to the proper authorities of the city all violations thereof, to make arrests and to cooperate with the commissioner of revenue and other officials of the city in a strict enforcement of the provisions of all license laws and ordinances."

Sections 21.26 and 21.27 relate to the methods and procedures for suspending and revoking the license. Section 21.21 (b) declares that an individual must relinquish his Fifth and Fourth Amendment federal right to privacy of books and records upon the purchase of this license. Can an individual be forced to relinquish one federal right in order to retain another? Section 21.4 (a) declares that the license will be issued only after the city personal tax, merchants tax, and "charges for sewer connections lawfully due shall have been paid." If these conditions are justifiable infringements

on a federal right, what additional encroachments will be added next year? Of what value is a right if it can be emasculated by provisos?

If a city can impose such a tax and restriction, it is only a matter of time before the county, and the state, in the never-ending search for additional revenue and controls, imposes similar provisions. We can witness the prolific spread of sales taxes, income taxes, zoning regulations, etc. Is it inconceivable that the entire state may eventually require a license to pursue business? I believe not.

Even if there is no tax involved, it is the power to control and the potential lawful denial of an individual's right to make a living that must be recognized as a substantive issue of monumental proportions. An individual who falls out of favor with city hall can easily face harrassment by revocation of his license to make a living. Of what value is life without a way to provide food for the body? cf Smith v Texas, 233 US 630.

The issue presented herein is one of the issues that precipitated penning the Declaration of Independence. Our forefathers, harrassed by the Crown in the pursuit of their livelihood by innumerable taxes and regulations, clearly declared that the purpose of a lawful government is to protect the citizen's life, liberty, and pursuit of happiness. They declared that these objects are not gifts of any government, but are inalienable rights given by the Creator and that as such, it is the responsibility of the government to protect and secure these objects for the citizens. Are gifts from the Creator now subject to tax? Surely these objects can not properly be the basis for a privilege (excise) tax. This protection should be clearly evident from the Preamble of the Constitution. The guarantee of liberty

was further incorporated in the Fifth Amendment when the citizens felt insecure, and was again renewed and applied to the states by the Fourteenth Amendment. Can an individual now acquire a criminal record for pursuing a federal right? Surely the guarantee of liberty has lost none of its import by the passage of a mere 200 years. Hopefully the guarantee can be renewed at a more modest price than was paid by our forefathers.

The citations in the discussion of the merits within the Opinion of the Court of Appeals have been analyzed in the Motion for Rehearing. In review, American Manufacturing Company, Incorporated, v St. Louis, 256 US 459, clearly holds that the occupational license tax is lawful "unless federal right be shown." Federal right has been continually shown. Carmichael v Southern Coal and Coke, 301 US 495, does not adjudicate individual's rights; it involves two corporations and a tax on the employee-employer relationship. No claim of a constitutional right to be an employer/employee has been made in this case. 71 Am Jur 2d, State & Local Taxation 392, discusses the method of calculating a franchise (privilege) tax but does not discuss the the propriety of the imposition. People v Bates, 93 NYS2d 313, is not a holding case in Missouri nor does it construe liberty.

The Opinion also mentions a Motion for New Trial/ Verdict filed on September 5 that appears on page 86 of the Transcript. Pages 86 thru 97 of the Transcript have been acknowledged by both parties as not presented or filed in this case. (Ref: Motion to correct the Record filed in the Court of Appeals on January 25, 1980). A Motion for New Trial filed in this case on July 18 appears at page 76 of the Transcript.

CONCLUSION

For these reasons, the Court should note probable jurisdiction of this appeal.

Respectfully submitted,

James E. Carter, Jr.
In Propria Persona
2440 Rochester
Kansas City, Missouri 64120
(816) 241-2722

INDEX TO APPENDIX

Judgment of the Circuit Court	1a
Opinion of the Court of Appeals	1a
Order denying Rehearing/Transfer	4a
Order denying Application for Transfer	5a
Notice of Appeal to the Supreme Court of the United States	5a
Kansas City Ordinance No. 21.20	6a
United States Constitutional Provisions	7a
Missouri Constitution, Article V, Section 3.	7a

JUDGMENT OF THE CIRCUIT COURT

The Circuit Court of Missouri, Sixteenth Judicial Circuit, Division Number four, City of Kansas City, Missouri, vs. James E. Carter, Jr., case number MA 78-0836, entered the following Order/Judgment in the office of the Court Administrator on July 14, 1978:

Charge--Doing business without license.
Ordinance No. 21-20.

Plea--Not guilty.

Judgment/Findings--Evidence heard. Court finds defendant guilty and assesses punishment. Punishment: Fine $100.00. Costs against defendant.

The above is found at page 74 of the transcript.

The above Order/Judgment was reiterated during allocution on September 14, 1978, as recorded at page 105 of the transcript.

OPINION OF THE COURT OF APPEALS

The following Opinion was filed in the Missouri Court of Appeals, Western District, in the case of City of Kansas City, Missouri, vs. James E. Carter, Jr., case number WD 30751, on October 29, 1979:

Defendant James E. Carter, Jr., was convicted in the Municipal Court of Kansas City, Missouri, of doing business without an occupation license, a violation of Kansas City's municipal ordinance, Section 21.20, Code of General Ordinances. His punishment

was assessed as a fine of $100. A trial upon appeal to the Circuit Court of Jackson County had the same result, and an appeal from the judgment in the latter court brings the case to us.

Defendant has acted pro se throughout.

Defendant does not deny that he operated in Kansas City, Missouri, during the period in question, the calender year 1978, a business known as Cheshire Bed Company, engaged in the manufacture of "vertically stored beds". He does not deny that the ordinance under which he was charged was in full force and effect, nor that he failed, in violation of its terms, to purchase the license.

His claim upon appeal is, first,that the trial court "denied him an opportunity to properly prepare a defense on constitutional grounds".

This complaint evidently refers to the defendant's request, made after the City had rested its case, as follows:

> "With the permission of the Court, I would like to have the opportunity to submit Xeroxed copies of some information which I do not have available to submit to the Court at this time. It includes case citations regarding liberty as secured by the Preamble of the United States Constitution, case citations whereby the rights of an individual are not subject to taxation."

The defendant, after the court explained what constituted evidence, had declined to present any evidence, saying he wished to present "only constitutional defenses".

The court declined to defer his judgment in the case, but proceeded to find defendant guilty and to assess the fine already mentioned.

The trial court was not obliged to await defendant's brief or "Xeroxed information" and was well within his discretion in proceeding to announce his findings. Kwiechien v. Gordon, 365 A.2d 118, 121 (Conn. 1976); Annot., 86 A.L.R. 2d 1233 (1962).

Defendant afterwards on September 5, filed his "Motion for New Trial/Verdict" which was accompanied by "Supplementary Suggestions to Defendant's Motion to Dismiss". In the latter document, he advanced an argument based upon the Fifth Amendment to the Constitution of the United States, that he could invoke the privilege against self-incrimination to withhold his business books and records from audit by the city auditors. Attached thereto were some photocopied pages from Am. Jur.2d. The court stated upon the hearing on the motion for new trial on September 14, that he had read the same. The defendant said he had nothing more to offer. The court thereupon overruled the motion for a new trial.

The motion for a new trial and the hearing thereon gave the defendant an opportunity to present any arguments he believed the court had failed to consider on the trial. Perhaps the material he presented upon the hearing on the new trial motion was that which he had asked at the trial to be allowed time to submit.

Defendant's brief here also contains several abstract statements of constitutional law, which preserve nothing for review. Rule 84.04 (d); Brewer v. Blanton, 555 S.W.2d 381, 386 (Mo. App. 1977).

The court has ex gratia examined defendant's criticisms of the city ordinance and notes that there is no constitutional prohibition of a municipal corporation's laying an occupation license tax on businesses, measured by gross receipts, pursuant to authority granted by the state. Carmichael v Southern Coal & Coke Co., 301 U.S. 495, 508-9 (1937); American Mfg. Co. v City of St. Louis, 250 U.S. 459, 463 (1919); People v Bates, 93 N.Y.S. 2d 313, 315 (1949); 71 Am Jr.2d, State & Local Taxation, section 392 (1973). State authority is contained in Section 92.040, RSMo 1978, and Article I, Section 57 of the City Charter of the City of Kansas City. None of defendant's cases hold that the power does not allow taxing individual proprietorships as well as corporations.

The judgment is affirmed.

All concur.

REHEARING/TRANSFER

The following information from the Court of Appeals, dated December 3, 1979, regarding case number 30751 was received by postcard:

> Appellant pro se Motion for rehearing overruled. Transfer to Supreme Court denied. See Rule 83.03.

ORDER DENYING APPLICATION FOR TRANSFER

The following Order from the Supreme Court of Missouri in the case of City of Kansas City, Missouri, vs. James E. Carter, Jr., case number 61846, was entered of record on January 15, 1980:

> Now at this day, on consideration of appellant's Application to transfer the above entitled cause from the Western District Court of Appeals, it is ordered that said application be, and the same is hereby denied.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

The following Notice of Appeal was filed in the Court of Appeals, Western District, State of Missouri, in the case of City of Kansas City, Missouri, vs. James E. Carter, Jr., number 30751, on January 25, 1980:

> Notice is hereby given that James E. Carter, Jr., the Appellant named above, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Missouri that denied an Application for Transfer on January 15, 1980.
>
> This appeal is taken pursuant to 28 USC 1257 (2).

A notarized affidavit of service dated January 25, 1980, was attached.

KANSAS CITY ORDINANCE No. 21.20

The following is Kansas City's municipal ordinance Section 21.20, Code of General Ordinances:

> Sec. 21.20. Doing business without license; false statements in application.
>
> Any person required by this chapter to obtain an occupational license, who shall engage in any business, occupation, pursuit, profession or trade, or in keeping or maintaining any institution, establishment, article, utility or commodity for which such license is required, without first procuring and paying for such license; and every manager, agent, officer or employee of any such person who shall assist any such person in engaging in such unlicensed activity after receiving notice that such person has not procured and paid for such license; and any person, including any such manager, agent, officer or employee, who knowingly makes any false statement in any application for any such occupational license as to any gross annual business, annual gross receipts, gross annual commissions, or as to any other conditions or factors upon which such license fee is or shall be based, shall be guilty of a misdemeanor.

UNITED STATES CONSTITUTIONAL PROVISIONS

The following provisions of the United States Constitution are improperly infringed by the City ordinance:

PREAMBLE

We the People of the United States, in Order to... secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

FIFTH AMENDMENT

No person shall be...deprived of life, liberty, or property...

FOURTEENTH AMENDMENT

...nor shall any State deprive any person of life, liberty, or property...

MISSOURI CONSTITUTION

Article V, Section 3, of the Missouri Constitution as amended August 3, 1976, is as follows:

Jurisdiction of the Supreme Court--The supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of a treaty or statute of the United States, or of a statute or provision of the Constitution of this State, the construction of the revenue laws of this state, the title to any state office and in all cases where the punishment imposed is death or imprisonment for life. The court of appeals shall have general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the supreme court.

Supreme Court, U. S.
FILED
APR 30 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1979

No. 79-1606

KANSAS CITY, MISSOURI,
Appellee,

vs.

JAMES E. CARTER, JR.,
Appellant.

ON APPEAL FROM THE MISSOURI COURT OF APPEALS WESTERN DISTRICT, MOTION TO TRANSFER TO THE SUPREME COURT OF MISSOURI HAVING BEEN DENIED

MOTION TO DISMISS OR AFFIRM

AARON A. WILSON
City Attorney
GEORGE L. DEBITETTO
Assistant City Attorney
2800 City Hall
414 East 12th Street
Kansas City, Missouri 64106
274-1262
Attorneys for Appellee

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

INDEX

Jurisdiction 1
Statement 3

Argument—

The Case Presents No Substantial Federal Question 7
Appellant Has Preserved Nothing For Review 12

Conclusion 15
Appendix 17

Table of Authorities

CASES

American Manufacturing Co. v. City of St. Louis, 250 US 459, 39 Sup. Ct. 522, 63 L Ed 1084 7
Chambers v. Kansas City, 446 SW2d 833 (Mo. 1969) 12
DeBacker v. Brainard, 396 US 28, 90 Sup. Ct. 163, 24 L Ed 2d 148 (1969) 2
Dors v. Wulff, 522 SW2d 325 (Mo. App. 1975) 12
Kansas City, Missouri v. Graybar Elec. Co., Inc., (Sup. Ct. Mo. 1970) 454 SW2d 23 14
Live Oak Water Users' Association v. Railroad Commission of California, 269 US 354, 46 Sup. Ct. 149, 70 L Ed 305 (1926) 2
Long v. Lincoln, (Mo. App. 1975) 528 SW2d 512 12
New York ex rel. Bryant v. Zimmerman, 278 US 63 13
U. S. v. Louisburg Schools, (3rd Cir. 1976) 539 F2d 301 ..... 11, 12
White v. City of Evansville, Indiana, 310 F. Supp. 569 (1970) 9, 10, 11

OTHER AUTHORITIES

Article I, Section 57, City Charter of Kansas City 8
Section 21.20, Code of General Ordinances of Kansas City 4
Section 21.34, Kansas City's Occupation License Tax 3, 7
Section 92.040 Mo.R.S. 1969 .....9, 14
Rule 84.04(d), Missouri Rules of Civil Procedure 12, 14
Article X, Section 1 "Taxation" V.A.M.S. 7
4 USC 105 (Buck Act) 11, 12
28 USC 1257(2) 2

In the Supreme Court of the United States

October Term, 1979

No. 79-1606

KANSAS CITY, MISSOURI,
Appellee,

vs.

JAMES E. CARTER, JR.,
Appellant.

ON APPEAL FROM THE MISSOURI COURT OF APPEALS WESTERN DISTRICT, MOTION TO TRANSFER TO THE SUPREME COURT OF MISSOURI HAVING BEEN DENIED

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16 of the United States Supreme Court Rules, appellee, Kansas City, Missouri, moves the Court to dismiss this appeal from the judgment and order of the Missouri Court of Appeals, Western District, upon the grounds that this appeal is not within the jurisdiction of this Court and that the question on which the decision of the lower Court rests does not present a substantial Federal question.

In the alternative, appellee, Kansas City moves the Court to affirm the aforementioned judgment and order on the ground that the question on which the decision of this cause rested is quite limited in scope and has been thoroughly considered by the Supreme Court of the United States and the Supreme Court of Missouri, thereby requiring no further argument.

JURISDICTION

Appellant has sought to invoke the jurisdiction of this Court pursuant to the provisions of 28 USC 1257(2). However, as is evident from the decision of the Missouri Court of Appeals, Western District (Jurisdictional Statement, Appendix page 1a) from which this appeal has been taken, the case of Kansas City v. James E. Carter, Jr., does not draw into question the validity of a Missouri statute or ordinance on the ground of its being repugnant to the Constitution, treaties or laws of the United States for the reason that the appellant preserved nothing for review; and further for the reason that this case presents no substantial federal question. 28 USC 1257(2). Accordingly, the questions presented by this appeal, standing alone, cannot be subject to review by this Court by way of an appeal. *DeBacker v. Brainard,* 396 US 28, 32, 90 Sup. Ct. 163, 24 L Ed 2d 148, 153 (1969); *Live Oak Water Users' Association v. Railroad Commission of California,* 269 US 354, 46 Sup. Ct. 149, 70 L Ed 305 (1926). Therefore, appellee Kansas City, Missouri submits that said appeal should be dismissed.

STATEMENT

Appellee, Kansas City, Missouri, respectfully submits that the facts constituting the basis of this appeal are incorrectly presented to this Court in the appellant's Jurisdictional Statement under the heading "Jurisdictional Statement" and again appellant incorrectly misstates this case in his Jurisdictional Statement under the heading "Question Presented by Appeal" for the reason that Kansas City, Missouri does not impose an occupation license tax on "natural citizens" or individuals working for wages or salaries. The authority for the imposition of Kansas City's Occupation License Tax is expressed pursuant to the provisions of Section 21.34 (Appendix page 19) which clearly and unequivocally imposes an occupation license tax only on "businesses".

The question presented on this appeal is whether a municipal corporation, pursuant to state authority, can impose an occupation license tax on businesses, whether those businesses be corporations or proprietorships.

Appellee, Kansas City, respectfully submits to this honorable Court that it believes it is not humanly possible to reasonably evaluate the jurisdictional issue here without some knowledge of the facts surrounding this comedy of errors. The appellant, Jimmy Carter, Jr., litigates "pro se". With that in mind appellee, Kansas City, is compelled to provide this Court with a reasonable statement of facts attendant to this cause cognizant of the fact that we are addressing ourselves to a Jurisdictional Statement and not the brief of the cause.

This cause originated in the Municipal Court of Kansas City, Missouri pursuant to a summons served on the defendant (April 5, 1978) charging the defendant, Carter, with doing business without an occupation license in violation

of Section 21.20 of the Code of General Ordinances of Kansas City (see transcript page 3) at his business location at 2440 Rochester, Kansas City, Jackson County, Missouri. A preliminary hearing in the Municipal Court was held on June 14, 1978 and judgment rendered against the defendant Carter at that time.

Subsequent thereto defendant Carter perfected his appeal to the Circuit Court, Division 4, of Jackson County, Missouri where trial was held, de novo, on July 14, 1978 (transcript page 22). The defendant Carter made his appearance, pro se, in the Municipal Court as well as in the Circuit Court.

From an adverse judgment in the Circuit Court of Missouri the defendant Carter appealed to the Supreme Court of Missouri (see transcript page 106) appearing to rest jurisdiction therein on a "construction of the federal or state constitution". However, on February 16, 1979 the Supreme Court of Missouri transferred this cause to the Missouri Court of Appeals, Western District, "in which jurisdiction is vested" (letter of February 16, 1979, Appendix page 26).

Meanwhile, contemporaneous with the Municipal Court action hereinbefore referenced defendant Carter filed a motion to dismiss for lack of jurisdiction (see transcript page 6) and thereafter on June 5 filed a petition for removal, all in the United States District Court, Western District of Missouri, Western Division (outside of the transcript) and also filed his original "Answer and Counterclaim" in the United States District Court on July 14, 1978 (see transcript page 14). Both documents failing to reflect any certification of service on the City or its legal representatives. No logical reason existed for this defendant Carter to file an "Original Answer and Counterclaim" in the United States District Court for the reason that there

was no *original petition* filed by the City or any of its representatives against the defendant in the federal courts. However, Kansas City on June 8, 1978, filed in the United States District Court its motion to dismiss defendant's *Petition for Removal* (see transcript page 27, lines 1 through 7). Apparently the defendant Carter's *Petition for Removal* was denied and apparently Kansas City's motion to dismiss defendant's petition for removal was sustained in the federal court (see transcript page 27, lines 20 through 25). However, the City did not receive a copy of the Federal District Court's Order and was therefore unaware of the ruling at the time this case came on for trial in the Circuit Court of Missouri (see transcript page 28, lines 1 through 18). Furthermore, in an additional effort by defendant to seemingly complicate further this matter, he appears, from the record, to have filed his "original answer and counterclaim" with the clerk of the *Municipal Court* (see transcript page 29, lines 23 through 25). The clerk of the Municipal Court is to be distinguished from the clerk of Kansas City, Missouri, a municipal corporation. Service of process in litigation should be served on the clerk of Kansas City, Missouri, a municipal corporation and not on the Municipal Court clerk.

Subsequently, upon receiving an adverse judgment in the Kansas City Municipal Court, the defendant appealed to the Circuit Court of Missouri and while in the Circuit Court, which provides for a trial de novo, the defendant Carter attempts to file his "Original Answer and Counterclaim", captioned for filing in the "United States District Court, Western District of Missouri, Western Division", on the City during the trial over the objections of the City's attorney (see transcript pages 34, 35, 36, 37 and 38). Appellee objects for the reason that pleadings are not required and answers and counterclaims are not provided for

by the rules in cases originating in the Municipal Court of Kansas City, Missouri.

It was under the conditions hereinbefore referenced that the Supreme Court of Missouri addressed itself to the jurisdictional issue in this case and for the obvious reasons as hereinafter provided, declined jurisdiction and referred this cause to the Missouri Court of Appeals, Western District on October 29, 1979.

The opinions of the Circuit Court of Missouri, Sixteenth Judicial Circuit, Division 4 and the Missouri Court of Appeals, Western District, are correctly set forth in appellant Carter's appendix on pages 1a through 4a.

Subsequent to the verdict of the Circuit Court, Division 4, Sixteenth Judicial Circuit, Jackson County, the appellant Carter filed a "Motion for New Judge" alleging "apparent prejudice of the Honorable Judge Randall" (transcript page 76); a motion for new trial (transcript page 77); a motion for "Default Judgment against the Complainant" (transcript page 80); and "Motion for Order to Show Cause why the Prosecuting Attorney should not be held in Contempt of Court" (transcript page 84).

All of the above-referenced motions were overruled at hearing, appellant Carter present, on September 14, 1978 (see transcript pages 100 through 105).

ARGUMENT

The Case Presents No Substantial Federal Question.

The issue presented to the Missouri Court of Appeals, Western District, by virtue of these proceedings was whether appellee, Kansas City, Missouri, a municipal corporation having its own charter, pursuant to State authority could impose an occupation license tax on sole proprietorships. Appellant, James Carter, Jr., misstates this case when he alleges the issue to be that of a municipal corporation's right to impose an occupation license tax on a "natural citizen" as distinguished from a corporation. Appellee, Kansas City, reiterates, Section 21.34 provides for the imposition of our occupation license taxes on businesses, whether corporations or sole proprietorships, and does not impose an occupation license tax on "natural citizens". There is no provision in appellee Kansas City's ordinances for providing an occupation license tax on persons working for wages or salaries.

The law with respect to this matter has long since been laid to rest by this Court and as a consequence thereof it is respectfully submitted this case presents no substantial federal question.

The law is quite expressive in holding municipal corporations are free to lay an occupation license tax on businesses pursuant to state authority. See *American Manufacturing Co. v. City of St. Louis,* 250 US 459, 39 Sup. Ct. 522, 63 L Ed 1084. Kansas City's power to tax emanates from the State pursuant to Article X, Section 1 "Taxation" V.A.M.S. which provides as follows:

> "The taxing power may be exercised by the General Assembly for state purposes, and by counties and other

political subdivisions under power granted to them by the General Assembly for county, municipal and other corporate purposes."

One of the taxing powers granted or delegated to Kansas City is found in Section 92.040 Mo.R.S. 1969, the pertinent provisions of which provide as follows:

"* * * All such cities, for city and local purposes, are hereby authorized to license, tax and regulate the occupation of merchants and manufacturers, and may graduate the amount of annual license imposed upon a merchant or manufacturer in proportion to the sales made by such merchant or manufacturer during the next year preceding any fixed date."

Another source of taxing power directly related to this matter is found in Article I, Section 57 of the City Charter which provides as follows:

"Subject only to the necessary extent of the limitations imposed by the Constitution and Laws of the United States and the State of Missouri, it shall have power:

(57) Trades, businesses, professions, callings. To license, tax and regulate any and every person, firm, association or corporation in anywise engaged in the occupation, business, trade, pursuit, profession, calling, employment, vocation, advocation or practice of * * *."

Pursuant to the above-referenced authorities, the law is quite clear that the State of Missouri does have the power to tax, regulate, and license businesses within the state. Further, that this power can be delegated pursuant to legislative action of the General Assembly of the State. That the General Assembly of the State of Missouri did

delegate this taxing power to appellee Kansas City pursuant to the enactment of Section 92.040 Mo.R.S. 1969.

Appellant James Carter cites the case of *White v. City of Evansville, Indiana,* 310 F. Supp. 569 (1970) as supportive of its contention that appellee Kansas City cannot require appellant to obtain an occupation license to operate his business (Cheshire Bed Co.) in Kansas City, Missouri. Appellant's reliance on *White v. City of Evansville* is misplaced for the reason that it is readily distinguishable from the instant cause. To begin with, in *White v. City of Evansville* the City was denying an occupation license to the petitioners who were "laborers". Those petitioners appeared not to be in business for themselves. They were cited under the Building Code of the City of Evansville, Indiana, dealing with the licensing of plumbers. Based upon that ordinance the City of Evansville required persons to obtain a license before engaging in the work of laying sewer pipe from main sewers or side sewers to buildings or structures on private real estate. The City of Evansville and such ordinance did not require such plumbing license of any person who lays sewer pipe for main sewers or side sewers in real estate other than that privately owned and possessed, such as public ways. In brief, the ordinance on its face and as applied by the City of Evansville, prevented the plaintiffs and other laborers from performing part of the work of their occupation as laborers, namely the laying of sewer pipe outside of buildings, inside property lines, which work they perform and which occupation they follow for their livelihood. In that case the United States District Court, S.D. Indiana, Evansville Division, held there was an improper classification and struck the ordinance down on the basis of equal protection of the laws, stating as follows:

"There is no reasonable basis for the classification established by Section 1311.01(c) of said ordinance of said Municipal Code of the defendant, City of Evansville, in the following words: '* * * or on any premises including connection with sewer or disposal systems within the city, * * *', which words, on their face and as applied by defendant, make a classification of sewer pipe laid outside of buildings in said city, of such pipe which is laid inside a property line, and such pipe which is laid outside a property line, and requires that a plumber's license be obtained by any person who lays sewer pipe, in the City of Evansville, Indiana, outside of buildings and inside a property line, but does not require that such license be obtained by any person who lays such sewer pipe outside a property line.

The aforesaid classification in the above-cited portion of Section 1311.01(c) City of Evansville Municipal Code, bears no reasonable relation to the safeguarding of life, health or property of the residence of defendant, City of Evansville, and is arbitrary and unreasonable."

It is obvious that in *White v. City of Evansville* we were dealing with a regulatory measure which sought to restrict the licensing of certain individuals. As a consequence thereof it has no relevancy to the instant cause which is an occupation license tax for the purpose of raising revenue. In addition, Kansas City does not attempt to deny appellant Carter a license but on the contrary insists that he apply and obtain a license to do business in the City. Furthermore, appellee Kansas City licenses and taxes for "revenue purposes" only businesses and not individuals or "natural citizens". The *White v. City of Evansville* case went off on a regulatory licensing code the basis

of which was the safeguarding of the life, health or property of the residents of the City of Evansville. Since its arbitrary classification had no reasonable relationship to the aforementioned criteria it was properly struck down by that Court. Furthermore, that Court found a non-uniform classification which failed to meet the criteria necessary to sustain it against a constitutional challenge of equal protection of the laws.

Appellee Kansas City submits in the instant cause we do not have a classification issue leading to a test of uniformity. The instant cause rests on the issue of a municipality's *"power"* to impose an occupation license tax for the purpose of revenue on businesses.

Appellee Kansas City submits that *White v. City of Evansville* is simply not in point with the issue in this particular cause.

In further support of appellant Carter's position, he cites the case of *U. S. v. Louisburg Schools*, (3rd Cir. 1976) 539 F2d 301. An analysis of that case by appellee Kansas City clearly reflects that it is distinguishable from the instant cause on the facts. In that case the United States brought action seeking a declaratory judgment that county and school districts could not impose and collect occupation and per capita taxes of federal employees and their dependents residing in the federal enclave known as the Louisburg Federal Penitentiary. There, the Pennsylvania Statutes ceding jurisdiction over the lands in question to the United States contained a provision that "said lands shall be exempt from the payment of all taxes, state and local". The Court held that the provision did not imply a reservation of power to tax persons residing on the property. Further, that Court found that the so-called occupation taxes imposed by school district in effect constituted an "income tax" within the Buck Act, 4 USC 105, and could be imposed, except with respect to the assessment

on housewives which was not computed with reference to income. However, further analyzing the facts of this case we find that the tax on housewives was only on those housewives who were gainfully employed on either a full or part-time basis in other occupations. With respect to that tax the Court found it not based on "income". Consequently, the assessment on housewives (gainfully employed in other occupations) was struck down as contra to and in violation of the Buck Act for the reason that the Buck Act permits taxation on federal enclaves by states only on "income" where the statute ceding jurisdiction over the lands in question to the United States contains an exemption provision disallowing payment of all taxes, state and local. Obviously, *U. S. v. Louisburg Schools* is not in point for the reason that it involved a construction of the Buck Act; it did not, carte blanche, tax housewives on the occupation of being a housewife as stated by appellant Carter; and even if it did, appellee Kansas City does not tax individuals or "natural citizens" who are not in business for themselves.

Appellant Has Preserved Nothing For Review.

Rule 84.04(d) of the Missouri Rules of Civil Procedure requires an appellant to state the precise action or ruling of the trial court sought to be reviewed. Moreover, an appellant must state wherein and why the alleged action or ruling is erroneous. The rule goes on to note that a mere abstract statement of law without showing how the statement is related to another action or ruling of the court will not suffice to meet the requirements of the law. The requirements of this rule are mandatory and noncompliance therewith in the points relied on section of a brief fails to preserve anything for review. See *Chambers v. Kansas City*, 446 SW2d 833 (Mo. 1969); *Dors v. Wulff*, 522 SW2d 325 (Mo. App. 1975); *Long v. Lincoln*, (Mo. App. 1975) 528 SW2d 512.

Appellee Kansas City, Missouri submits that appellant James Carter has preserved nothing for this Court to review.

Further, he preserved nothing for the Supreme Court of Missouri to review (appellant originally appealed from the Circuit Court to the Supreme Court of Missouri but jurisdiction was declined) and failed to adequately preserve and brief his issues in the Missouri Court of Appeals, Western District, as evidenced by that Court's opinion "Ex Gratia".

An examination of appellant Carter's Notice of Appeal to the Supreme Court of Missouri (from the Circuit Court of Jackson County) provides no basis on which Supreme Court jurisdiction can be said to be clearly and decisively communicated. Supreme Court Rule 81.08 requires that a "concise explanation" be given within ten days after the notice of appeal is filed in the Supreme Court. Appellant did file "Appellant's Suggestions in Support of Notice of Appeal" (his concise explanation) with the Supreme Court for the purpose of clearly delineating the issues upon which Supreme Court jurisdiction would rest. An examination of appellant's "Suggestions in Support of Notice of Appeal" compels one to the unequivocal conclusion that appellant did not exercise "fair precision" in bringing any federal issue to the attention of the Supreme Court of Missouri. See *New York ex rel. Bryant v. Zimmerman*, 278 US 63, 67.

The only statement of appellant Carter in his jurisdictional statement (Appellant's Suggestions in Support of Notice of Appeal—see Appendix herein) to the Supreme Court of Missouri capable of communicating appellant's theory of Supreme Court jurisdiction, as distinguished from an abstract statement of constitutional law, can be found on page 4, paragraph 2, thereof. Appellant Carter therein states that he rests Supreme Court jurisdiction on the

validity of Section 92.040 Mo.R.S. for the reason that he operates his business as an individual as distinguished from a corporation.

It would appear the Supreme Court of Missouri interpreted appellant's Jurisdictional Statement as involving a construction of Section 92.040 Mo.R.S.

The jurisdiction of the Supreme Court of Missouri is provided for in Article V, Section 3 of the Constitution of Missouri, 1945, the relevant provision as follows:

> "The Supreme Court shall have exclusive appellate jurisdiction in all cases involving the construction of the Constitution of the United States or of this State, the validity of a treaty or statute of the United States, or any authority exercised under the laws of the United States, the construction of the revenue laws of this State, * * *."

It would appear that since Section 92.040 Mo.R.S. is not a revenue law of the state the Supreme Court of Missouri declined jurisdiction. See *Kansas City, Missouri v. Graybar Elec. Co., Inc.*, (Sup. Ct. Mo. 1970) 454 SW2d 23.

Thereafter, this cause was transferred by the Supreme Court of Missouri to the Missouri Court of Appeals, Western District, for hearing. To compound the matter, appellant Carter then submitted his brief in the Missouri Court of Appeals without once raising and briefing Section 92.040, the very issue he predicated his appeal on. Consequently, appellee Kansas City in submitting its Respondent's Brief to the Missouri Court of Appeals, Western District was compelled to preface its brief with "Respondent's Motion to Dismiss" for failure to comply with Rule 84.04(d).

For the reasons hereinbefore stated by appellee Kansas City it is obvious that appellant Carter failed to preserve

anything for review in the Missouri Court of Appeals, Western District.

Consequently, appellee Kansas City believes appellant Carter has preserved nothing for review and there is no substantial federal question presented to this Court. Consequently, appellee Kansas City respectfully submits that this Appeal be dismissed or in the alternative, the opinion below be affirmed.

CONCLUSION

For the foregoing reasons, appellee Kansas City respectfully submits that the questions presented by appellant Carter's jurisdictional statement, standing alone, are not jurisdictionally subject to review by this Court by way of appeal; and further, that said questions are so unsubstantial as not to need or require further argument. Accordingly, appellee Kansas City respectfully moves this Court to dismiss this appeal, or in the alternative, to affirm the judgment entered in the case by the Missouri Court of Appeals, Western District.

Respectfully submitted,

AARON A. WILSON
City Attorney
GEORGE L. DEBITETTO
Assistant City Attorney
2800 City Hall
414 East 12th Street
Kansas City, Missouri 64106
274-1262
Attorneys for Appellee

IN THE MUNICIPAL COURT OF KANSAS CITY, MISSOURI

STATE OF MISSOURI, COUNTY OF JACKSON-GRAY-PLATTE ss THE UNDERSIGNED COMPLAINS AND STATES THAT: INFORMATION NO. G183384

On or About	In Kansas City, Missouri At or Near	At About (Time)	Last Name	First	Middle
4/6/78	2440 Rochester		Carter	James	E. Jr.

Address	City and State	Age	DOB	State of Birth	Race	Sex	Hgt.	Wgt.	Eyes	Hair
2440 Rochester	Kansas City, Mo.	39	5-11-37	MO	W	M	6'	160	BL	DK

SSN	Employer	Address	Relative Name	Address
500-42-5446				

DID UNLAWFULLY WITHIN THE AFORESAID CITY, COUNTY AND STATE COMMIT THE FOLLOWING OFFENSE:

Doing business without an occupation license

G183384

In Violation of the Revised Ordinances of Kansas City, Missouri, 1956, As Amended, Chapter 21 Section 21.20 Penalty Chapter 1 Section 1.17

Above Complaint Is True As I Verily Believe

COMPLAINANT: Edward Kanecke OFFICER: Edward Kanecke

On information and upon official oath the prosecutor complains and informs the Court that these facts are true as he verily believes.

Assistant City Counselor

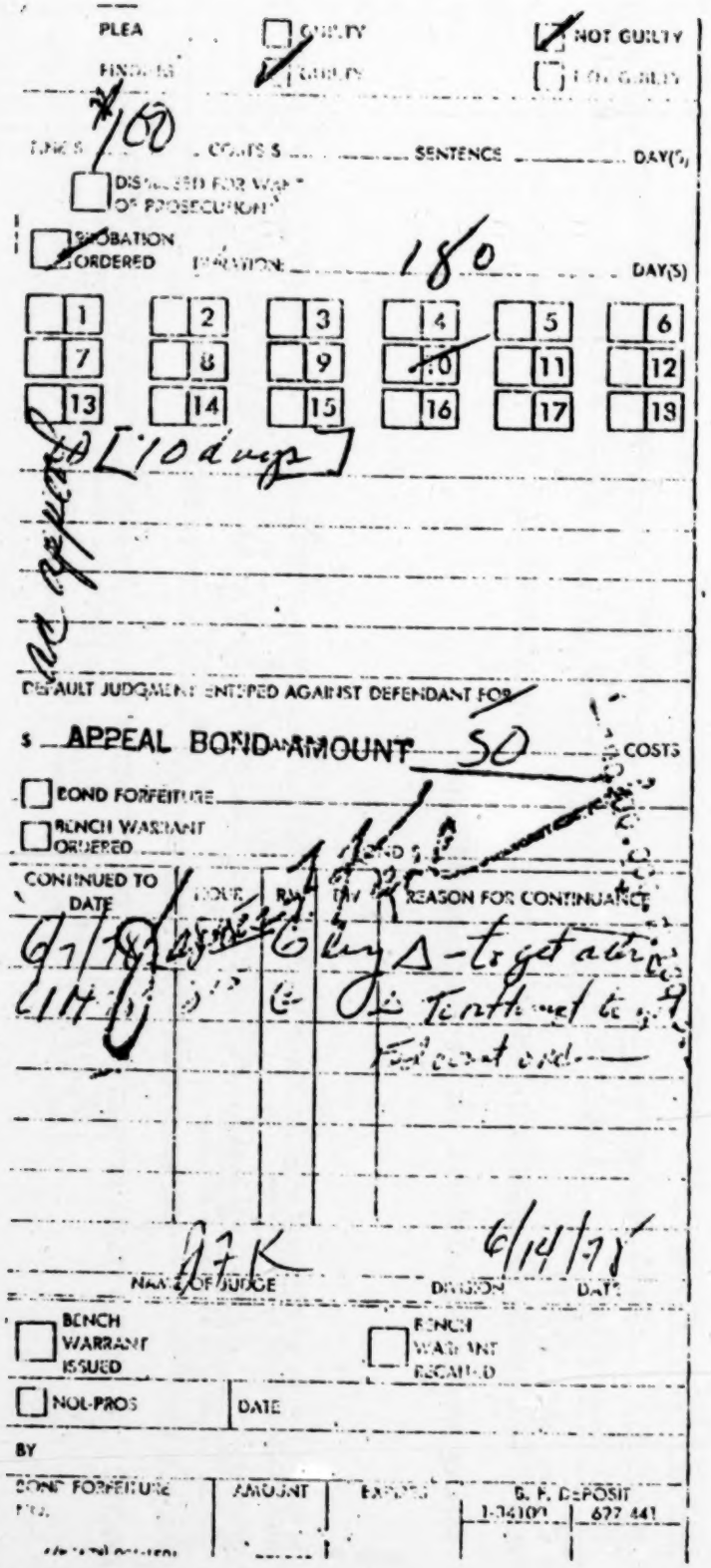
Serial No.	Unit	Pa. Area
2144	7	

MAY 10 19

Filed

Case Report Number	Date, Time & Location Of Arrest If Other Than Above:	Searched By
		PTS

Bond No.	Bond Amount	Property No.	Court Date	Time	Place	Room	Without Admitting Guilt, I Promise to Appear in the Municipal Court of Kansas City, Missouri, At the Time Indicated Hereon
			5-10-78	830 AM	1101 Locust Street	G	Defendant's Signature James E. Carter Jr.


PLEA ☐ GUILTY ☑ NOT GUILTY

FINDING ☑ GUILTY ☐ NOT GUILTY

FINE $ 100 COSTS $ _____ SENTENCE _____ DAY(S)

☐ DISMISSED FOR WANT OF PROSECUTION

☐ PROBATION ORDERED SUSPENSION 180 DAY(S)

☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6
☐ 7	☐ 8	☐ 9	☐ 10	☐ 11	☐ 12
☐ 13	☐ 14	☐ 15	☐ 16	☐ 17	☐ 18

Def Rpkd [10 days]

DEFAULT JUDGMENT ENTERED AGAINST DEFENDANT FOR

$ _____ APPEAL BOND AMOUNT 50 COSTS

☐ BOND FORFEITURE

☐ BENCH WARRANT ORDERED

CONTINUED TO DATE	HOUR	A.M. P.M.	DIV	REASON FOR CONTINUANCE
6/18/75	9:30		C	Dfs Δ - to get atty
6/19/75	9:30		C	Dfs Tenth mot to set aside default ord.

JFK — 6/14/75

NAME OF JUDGE — DIVISION — DATE

☐ BENCH WARRANT ISSUED ☐ BENCH WARRANT RECALLED

☐ NOL-PROS DATE

BY

BOND FORFEITURE	AMOUNT	EXONER.	B. F. DEPOSIT
PRE.			1-34101 | 622 441
[illegible]			

Sec. 21.34. Businesses, activities for which license is required.

Every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, engaged in any business occupation, pursuit, profession or trade, or in the keeping or maintaining of any institution, establishment, article, utility or commodity, which are or may hereafter be specified in the Charter of Kansas City, Missouri, Article I, Section 1(57), said article and section incorporated herein by reference, or specified otherwise in this chapter or in the statutes of the State of Missouri, shall procure and pay for a license therefor from the city, and such license fees shall be in the respective amount set out in this article and chapter, except as otherwise provided in this Code of Ordinances or other ordinances. (R.O. 1956, §30.260; 8th C.S. Ord. No. 42979, §A, 11-21-75)

IN THE CIRCUIT COURT FOR THE SIXTEENTH
JUDICIAL CIRCUIT OF MISSOURI

No. MA78-0836
KC # G183084

City of Kansas City, Missouri
Plaintiff

vs.

James E. Carter, Jr.
Defendant

16th. Circuit, Div. 4, Jackson Co., Honorable Alvin Randall; Mr. George DeBitetto, Pro. Attorney, 2700 City Hall, KC, MO 64106; Ms. Karen Todd, reporter

Notice of Appeal to Supreme Court of Missouri

(Filed September 14, 1978)

($50.00 Cash Bond Is Posted)

Notice is given that James E. Carter, Jr. appeals from the Judgment entered in this action on the 14th day of September, 1978.

Jurisdiction of the Supreme Court is based on fact that this appeal involves:

(Check appropriate box)

(X) Construction of the federal or state Constitution;

( ) Validity of a treaty or statute of the United States, or any authority exercised under the laws of the United States;

( ) Construction of the revenue laws of Missouri;

( ) Title to an office under the State of Missouri;

( ) An offense punishable by death or life imprisonment.

The offense is ..... and the section of the statute under which defendant was convicted is .....

*If the basis of jurisdiction is constitutional construction, construction of the revenue laws, or that an offense punishable by death or life imprisonment is involved, give a concise explanation, together with suggestions, if desired.

The issue brought before the Court is whether the United States Constitution—in the securing of "Liberty" in the Preamble and in the Fifth Amendment, and in the securing of the Right to Contract—protects the Right of an individual to pursue a common law livelihood within the geographic area of a municipal corporation without being required to buy/purchase an occupational license tax (ordinance 21.20). The Missouri Supreme Court has jurisdiction pursuant to the Constitution of Missouri, Article V, Section 3. The Circuit Court holds that the license must be purchased. Suggestions will be filed subsequently.

/s/ James E. Carter, Jr.
Pro Se.
Address: 2440 Rochester
Kansas City, Mo. 64120
(816) 241-2722

Dated September 14, 1978.

Directions to Clerk

The clerk is required to mail a copy of the notice of appeal by registered mail to the attorneys of record of all parties other than those taking the appeal, and to mail a copy of the notice of appeal together with the docket fee to the clerk of the appellate court. If a party does not have an attorney, the notice must be mailed to the party at his last known address. A copy of the notice of appeal

is to be sent by registered mail to the Attorney General when the appeal involves a felony. The clerk should then fill in the memorandum on the reverse side hereof. (See S.Ct. Rule 81.08.)

*The concise explanation, as required by S.Ct. Rule 81.08, must be given with this notice or within 10 days after the notice is filed.

Civil Procedure Form No. 8-A Modified

THE SUPREME COURT OF THE STATE OF MISSOURI

S.C. #60983
KC #G183084

City of Kansas City, Missouri,
Complainant,

vs.

James E. Carter, Jr.,
Defendant/appellant.

Appellant's Suggestions in Support of Notice of Appeal

Comes now the defendant/appellant to show the Court that jurisdiction for the instant case is properly vested in the Supreme Court of the State of Missouri.

The Constitution of the State of Missouri, Article V, Section 3, declares that the Supreme Court shall have appellate jurisdiction of cases involving the construction of Federal or State Constitutions, and of revenue laws.

The appellant has continually pointed out to the complainant that inherent and basic Federal Constitutional Rights of the appellant, as a natural citizen and not as a corporation, have been violated. See *State v Knight*, 171 SW2d 720, *Baker v Baker*, 274 SW2d 322.

In the MOTION TO DISMISS FOR LACK OF JURISDICTION filed in Municipal Court on April 26, 1978, the defendant specifically states that "Liberty" is secured by the United States Constitution for the people and that "Liberty" has been adjudicated to include the right to make a living, and that rights so secured are not subject to revenue taxation.

In the PETITION FOR REMOVAL with four pages of suggestions/citations filed on June 6, the appellant again points out the Constitutional Right to "earn a living" as being violated by the complainant. The suggestions/citations repeatedly focus on "Liberty", the Constitutional Rights of individuals and that Rights so secured for the people should not be subject to taxation.

In the ORIGINAL ANSWER AND COUNTERCLAIM filed on June 12, in District Court and served on the complainant, paragraphs four, five, and six focus on the Right of "Liberty." Paragraphs seven, eight, and nine focus on the Right to contract. Paragraph 22 lists the Rights of Liberty, pursuit of happiness, earning a living, and of contracts. Paragraph 23 and 36 discuss the Right to earn a living and enter contracts. Paragraph 42 lists all constitutional rights that are violated.

The trial in Municipal Court on June 14 held that the defense so stated was based on the Constitution and must be adjudicated in the Circuit Court.

The appellant approached the bar in Circuit Court on July 14 to determine what grounds, if any, the complainant had for not filing a reply to the ORIGINAL ANSWER AND COUNTERCLAIM as required by the Missouri Rules of Court. After forty-five minutes, there had been no valid legal grounds shown for the lack of a reply. The Court issued an Order: "Sit down! We are going to have a trial!"

At no time was the defendant given an opportunity to make a Plea. At no time did the defendant give any indication that he was ready, or prepared, to proceed with a trial. After the witnesses for the prosecution, the Court denied the defendant the opportunity to file any papers after trial or to read from any papers during trial. The Court did accept for filing a copy of the ORIGINAL ANSWER AND COUNTERCLAIM. The original could not be found in the court jacket. The unexplained absence of the plea from the jacket and the desire of the complainant to suppress the plea coupled with an awareness of the information contained within the plea lead to the filing of the MOTION FOR ORDER TO SHOW CAUSE WHY THE PROSECUTING ATTORNEY SHOULD NOT BE HELD IN CONTEMPT on September 5. The Complainant has never made a reply to the ORIGINAL ANSWER AND COUNTERCLAIM and that inaction which has not been supported by any legal foundation has been the basis for the MOTION FOR DEFAULT JUDGMENT filed on July 18.

The MOTION FOR NEW TRIAL filed on July 18 asserted that the appellant wanted an opportunity to structure a defense based on the points detailed in previous pleas and motions filed relative to the case and the rein keeps alive the points asserted in the plea and motions. See *Shewalter v Missouri Pacific Railroad Co.*, 54 SW 224.

It was after the court had denied all after-trial motions and had pronounced sentence on September 14, that the appellant interrupted the court to point out for the record that the appellant maintained that his legal defense was on specifically stated Constitutional grounds detailed in motions and pleas previously filed. During this occasion, when the court usually entertains allocution, the feeling of the court was expressed with "Frankly, I never have been able to figure out what your defense was. Good day."

Let it be understood that the above description of the development of the action is to fully assert that certain and specific constitutional grounds have been continually presented to the courts and to the complainant by the defendant at all stages of litigation. See *Metzger v Metzger*, 145 SW2d 380, *Ingle v City of Fulton*, 260 SW2d 666. The above description of the court action is definately not presented to obtain a new trial in Circuit Court for procedural irregularities on merits that the circuit court is not empowered to adjudicate. See *State v Arnett*, 370 SW2d 169, *In Re Schell's Estate*, 370 SW2d 816, *Missouri Water Co. v Public Service Commission*, 308 SW2d 704.

Jurisdiction is confined to the Supreme Court on cases involving the construction of the State and Federal Constitutions, notwithstanding the oath of office of all judges. See *Albrecht v State Highway Commission*, 363 SW2d 643, *State v Becker*, 268 SW2d 51. The Supreme Court is the only court in Missouri that can legally construe the State and Federal Constitutions. See *Kansas City v Howe*, 416 SW2d 683, *Village of Bel-Nor v Barnett*, 358 SW2d 832.

The basis of constitutional grounds for affixing jurisdiction does not exclude requesting the Supreme Court to review the lower court's ruling of various incidental motions. See *State v Francis*, 8 SW 1, *Taylor v Dimmitt*, 78 SW2d 841.

The instant case questions the validity of Missouri Statute Section 92.040 when such merchant or manufacturer is operating as an individual as distinguished from a child of the state (corporation) and thereby invokes jurisdiction of the Supreme Court. See *Emory v St. James Distillery*, 143 SW2d 318.

It is therefore asserted that the Supreme Court of the State of Missouri has jurisdiction of the merits of

the instant case, and that the appellant has fulfilled his obligations in the lower courts to properly affix appellate jurisdiction therein.

One copy delivered to Complainant:
Received by Linda S. Gettz
Title Secretary
Date 9-22-78
Time 9:58 am

James E. Carter, Jr.
Litigant Pro Se
2440 Rochester
Kansas City, Missouri 64120
(816) 241-2722

(SEAL)
CLERK OF THE SUPREME COURT
STATE OF MISSOURI
Jefferson City, Missouri
65101

Thomas F. Simon
Clerk

Telephone
(314) 751-4144

February 16, 1979

Mr. James E. Carter, Jr.
2440 Rochester
Kansas City, Missouri 64102

In re: City of Kansas City, Missouri
vs. James E. Carter, Jr., No. 60893

Dear Mr. Carter:

This is to advise that the Court this day has entered the following order in the above-entitled cause:

"Cause ordered transferred to the Missouri Court of Appeals, Western District, in which jurisdiction is vested."

The files are being mailed this day to the Clerk of the Court of Appeals, Western District.

Yours very truly,

Thomas F. Simon
/s/ Mary Elizabeth McHaney
By Mary Elizabeth McHaney
Deputy Clerk, Court en Banc

cc: George L. DeBitetto
Mrs. Mary Louise Thomas, Clerk, Missouri Court of Appeals, Western District

P. S. to Mrs. Thomas: The transcript of record is enclosed with the files but it has not been filed. That will be up to your court.

§ 3. Jurisdiction of the supreme court

Section 3. The supreme court shall have exclusive appellate jurisdiction in all cases involving the construction of the Constitution of the United States or of this state, the validity of a treaty or statute of the United States, or any authority exercised under the laws of the United States, the construction of the revenue laws of this state, the title to any office under this state, the title to real estate, in all civil cases where the state or any county or other political subdivision of the state or any state officer as such is a party, in all cases of felony, in other classes of cases provided by law, and until otherwise provided by law, in all cases where the amount in dispute, exclusive of costs, exceeds the sum of seventy-five hundred dollars.

92.040. Taxation and licensing of merchants and manufacturers by certain cities

For the purpose of state, county, and municipal taxes, merchandise held by merchants and the raw material,

merchandise, finished products, tools, machinery and appliances used or kept on hand by manufacturers shall constitute a class separate and distinct by itself. All cities in this state having a population of over three hundred thousand inhabitants are authorized to levy for local purposes a less *ad valorem* rate of taxation than that levied by them on real estate or other property for the same purpose, and said reductions may from time to time be arranged to apply on both or either the tax rate for payments of valid indebtedness or the tax rate for city purposes. All such cities, for city and local purposes, are hereby authorized to license, tax and regulate the occupation of merchants and manufacturers, and may graduate the amount of annual license imposed upon a merchant or manufacturer in proportion to the sales made by such merchant or manufacturer during the year next preceding any fixed date.

(R.S.1939, §§ 7743, 7744. Amended by L.1945 p. 1799, § 6)

80.04 Briefs—Contents

* * *

(d) Points Relied On. The points relied on shall state briefly and concisely what actions or rulings of the court are sought to be reviewed and wherein and why they are claimed to be erroneous, with citations of authorities thereunder. If more than three authorities are cited in support of a point made, the three authorities principally relied on shall be cited first. All authorities discussed in the argument shall be cited under the "Points Relied On". Long lists of citations should not be included.

Setting out only abstract statements of law without showing how they are related to any action or ruling of the court is not a compliance with this rule.

81.08 Notice of Appeal—Contents—Jurisdictional Statement Required—Trial Court Clerk to Notify, Whom

* * *

(b) Jurisdictional Statement. Appellant shall file with the clerk of the trial court as part of or with appellant's notice of appeal a concise explanation, together with suggestions not to exceed six pages, if desired, detailing the judgment or order appealed from and sufficient other facts about the case to show that jurisdiction of the appeal is in the court to which the appeal is taken. When the jurisdictional statement is filed as part of or with the notice of appeal, the clerk of the trial court shall serve copies of the same on all parties to the judgment other than the party or parties taking the appeal in accordance with subparagraph (d) of this Rule. Sufficient copies shall be supplied by appellant. As an alternative to filing a jurisdictional statement at the time of the filing of the notice of appeal, an appellant may, within ten days of the filing of the notice of appeal, file such jurisdictional statement with the clerk of the appellate court to which the appeal is taken and shall serve a copy of such jurisdictional statement on all other parties to the judgment. Any other party may, within ten days after being served with a copy of appellant's jurisdictional statement, file in the appellate court suggestions in opposition not to exceed six pages and shall serve a copy thereof on appellant and all other parties.

If the appeal involves a criminal or post-conviction case, the appellant's jurisdictional statement shall also give the nature of the offense and the section of the statute under which defendant was convicted.

The jurisdictional statement required by this Rule is for the purpose of facilitating appeals and preventing delays and is not a substitute for the jurisdictional statement required by these rules to be set forth in appellant's brief.

Supreme Court, U. S.
FILED
MAY 17 1980
MICHAEL RODAK, JR., CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1606

James E. Carter, Jr.,
Appellant,

vs

City of Kansas City, Missouri,
Appellee.

On Appeal From the Missouri Court of Appeals
Western District, Motion to Transfer to the
Supreme Court of Missouri Having Been Denied

REPLY TO MOTION TO DISMISS OR AFFIRM

James E. Carter, Jr.
In Propria Persona
2440 Rochester
Kansas City, Mo. 64120
(816) 241-2722

May 1980

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1979

No. 79-1606

James E. Carter, Jr.,
Appellant,

vs

City of Kansas City, Missouri,
Appellee.

On Appeal From the Missouri Court of Appeals
Western District, Motion to Transfer to the
Supreme Court of Missouri Having Been Denied

REPLY TO
MOTION TO DISMISS OR AFFIRM

There are several statements in the Motion to Dismiss that should be reviewed for this court.

The motion suggests that appellate jurisdiction to construe the United States Constitution is in the Supreme Court of the State of Missouri (p 14) and presents Article V, Section 3, of the Missouri Constitution of 1945 at page 27. The information is of historical value to show that such jurisdiction was in the Missouri Supreme Court. The Missouri Constitution as amended August 4, 1970, and August 3, 1976, is presented in the Jurisdictional Statement at page 7a. It reveals that jurisdiction to construe the federal constitution is now in the Court of Appeals while the Missouri Supreme Court construes the State constitution. See Jurisdictional Statement, p 5. The Missouri Supreme

Court accepted the issue as a federal question and transferred the case to the Court of Appeals where jurisdiction was vested.* When an issue has been accepted in the state appellate court as a federal question, the federal question is preserved for appeal to this court. Coleman v Alabama, 388 US 129, 133; Whitney v California, 274 US 357, 360 - 361; Manhattan Life Insurance Company v Cohen, 234 US 123, 134. See page 5, infra.

The city has also suggested that the question raised is unsubstantial. Perhaps the court will tolerate a paraphrase of Wesberry v Sanders, 376 US 1, 17: "Other rights are illusory if the right to (make a living) is undermined." It is for this court to determine if the right to pursue a livelihood (liberty) in the instant case is less substantive, essential, basic, or fundamental than the right to vote adjudicated in Wesberry. The court declared in Wesberry that the right to vote was fundamental "because it was preservative of all rights." The right to make a living is surely much more fundamental and substantive than the right to vote if evaluated by such a standard.

This court has found that taxes on rights secured by the Bill of Rights have presented substantive issues for this court to consider and overturn in the past: License taxes on the expressions of religion; Kunz v New York, 340 US 290; Follett v McCormick, 321 US 573; License tax on the right to speech; Staub v City of Baxley, 355 US 313; License tax on the freedom of association; Bates v Little Rock, 361 US 516; License tax on the freedom of the press, Jones v Opelika, 319 US 103; License tax on the right to vote; Harper v Virginia, 383 US 663; U.S. v Texas, 252 F. Sup. 234; affirmed, 384 US 155. The federal right to interstate commerce has been found on a multitude of occasions

* SEE MOTION TO DISMISS, P. 26.

to be an unsuitable basis for taxation. West Point Grocery v Opelika, 354 US 390; Dean Milk Company v Madison, 340 US 349.

This court has repeatedly held that if a tax can be levied on a privilege, the privilege is within the control of the taxing agency. Control, by taxation, is an attribute of sovereignty. The substance of the question posed by appeal is, simply stated; "Does the city have sovereignty, and control, over the right of an individual to pursue a livelihood and the entering and fulfillment of contracts to that affect?" Ref. Motion to Dismiss, p 11, paragraph 1.

Appellee introduces a unique claim in this court that the tax is imposed on "proprietorships" and not on individuals or natural citizens but declines to offer any legal authority to support such a distinction. The word in not found in the pertinent city ordinances. It is elementary that businesses pay no taxes. Only people, or a legal entity such as a state created corporation, pay taxes. Whether we call it a proprietorship, a business, a natural citizen, a person, or an entrepreneur, it is an individual in the pursuit of a livelihood, without any privilege or franchise granted by the state, that is the object of the city occupational license tax. Ref. Flint v Stone Tracy, 220 US 107, 162; Lynch v Household Finance Corp., 405 US 538. This court looks to the effect of the tax and not to the mere form. Bates v Little Rock, 361 US 516, 525; Richfield Oil Corporation v State Board of Equalization, 329 US 69.

City Ordinance 21.20 that was cited in the information reproduced in the Jurisdictional Statement at page 6a reveals that 'person' is used as the object of the tax five times. It is the purpose of the constitution to protect 'persons' and the fundamental rights of the individual from infringement by the government. Truax v

Corrigan, 257 US 312, 338.

The city suggests that the issue presented has "long since been laid to rest by this Court..." The only case cited to uphold this contention is American Manufacturing Company v City of St. Louis, 250 US 459, which has been extensively discussed below. It holds that the tax is a valid exercise of the city "unless federal right be shown." The appellant has continually shown nothing but federal right and this clear and obvious distinction is definately made within the Opinion. American Manufacturing Company, Incorporated, as a creation of the state, had no claim to any federal rights of an individual. Apparently this court has not previously adjudicated the issue of individual rights in the pursuit of their livelihood.

The Motion to Dismiss acknowledges that the tax is imposed as a revenue tax. p 10. The fact that it is enforced by police power was documented in the Jurisdictional Statement. The exercise of police power to enforce revenue measures is the essence of despotism. Lochner v New York, 198 US 45, 56; Adair v United States, 208 US 161, 173-174. Such a practice lead to the Magna Charta; it precipitated the American Revolution. Whereas basic fundamental rights may be the subject of regulation in the public health and safety, they are not suitable basis for revenue taxation.

The Motion to Dismiss suggests that a "summons" was served on the appellant. At page 17, the city reproduced the "information" that was accepted by the appellant.

The city further informs the court on page 4 that the petition for removal filed in the United States District Court is outside of the transcript. It is to be found at page 8 and 9 of the transcript with four pages

of Supreme Court citations construing federal rights. T. 10 - 13.

Erroneous conclusions regarding the service of pleadings in municipal court have been made by the appellee. In the event that they are of interest to this court, or this court wishes to determine why the pleading was not in the file jacket on appeal after service was made on the municipal court, the issues can be expounded in an auxiliary brief as requested in the Jurisdictional Statement, p 4.

For these reasons, this Court should note probable jurisdiction.

Respectfully submitted.

James E. Carter, Jr.
In Propria Persona
2440 Rochester
Kansas City, Mo. 64120
(816) 241-2722

— — — — — — —

The following should be added to page 2, supra.

Any deficiency in the particularity with which a federal issue is framed is cured if the highest state court assumes that a specific federal issue is properly before it. The Supreme Court does not then inquire into the framing of the issue by the litigant. Charleston Federal Savings & Loan Ass'n v Alderson, 324 US 182, 185; Saltonstall v Saltonstall, 276 US 260, 267.

ADDENDUM

The following exerpts are offered to show the substantive issue that has been presented. The information appeared on page 9A of the Kansas City Star newspaper dated May 12, 1980. The article reflected on the National Small Business Week.

"...the nation's 13 million small businesses...

"Small business long has been recognized as the generator of inventions, of jobs, of incomes. In the United States, it accounts for 43 percent of the Gross National Product... Moreover, it provides 58 percent of all employment opportunities and represents 90 percent of all businesses.

"... U.S. small business last year recorded $630 billion in sales and paid $95 billion in salaries...

"... small businesses in recent years have received less than 3.5 percent of all federal research development dollars but nonetheless have accounted for four times as many innovations per R&D dollar as medium-sized firms and about 24 times as many as large firms...

"... between 1969 and 1976, small business accounted for more than 98 percent of all new private-sector employment in the United States.

"...small business keeps competition alive, thus assuring technological advancement, variety, quality and cost control..."